

**VIRGINIA CONSTITUTION 1971**  
**CURRICULUM FOR UNDERGRADUATE COURSES**  
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## Introductions

“The question Whether one generation of men has a right to bind another, seems never to have been started either on this or our side of the water...[but] between society and society, or generation and generation there is no municipal obligation, no umpire but the law of nature. We seem not to have perceived that, by the law of nature, one generation is to another as one independant [sic] nation to another...On similar ground it may be proved that no society can make a perpetual constitution, or even a perpetual law. The earth belongs always to the living generation...Every constitution, then, and every law, naturally expires at the end of 19. years. If it be enforced longer, it is an act of force and not of right.”

### **Thomas Jefferson letter to James Madison, September 6, 1789<sup>1</sup>**

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The longevity of constitutions in U.S. history makes them uniquely complex as primary sources. The federal constitution and state constitutions reflect the eras in which they were created and amended while also providing vital evidence of each era in which they were used. Constitutions established early in U.S. history have become powerful, longstanding political and patriotic symbols in public discourse, not only structuring society but also shaping individuals' concepts of their government.

Because of the strong associations between constitutions and early America in popular memory, some might be surprised that the current Virginia constitution is comparatively young: it went into effect in 1971, the product of a governor-appointed Commission on Constitutional Revision, debates in the General Assembly, and votes of the Virginia public in the November 1970 election. This constitution was rooted in the context of social changes occurring in the 1960s and 1970s and marked significant change, replacing a 1902 constitution designed to enforce racist segregation and disfranchisement.

The Constitution of 1971 also reflected continuities, including its incorporation of key language and frameworks from the federal Bill of Rights ratified in 1791. The idea of reformulating a constitution to serve the present was also one with connections in early American history; when corresponding with James Madison during development of the U.S. federal constitution, Thomas Jefferson emphasized that a constitution requires participation from each generation. In an 1816 letter, Jefferson again emphasized that the Virginia constitution should undergo periodic revisions “so that it may be handed on, with periodical repairs, from generation to generation....”<sup>2</sup>

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<sup>1</sup> <https://jeffersonpapers.princeton.edu/selected-documents/thomas-jefferson-james-madison>;  
<https://oll.libertyfund.org/quote/thomas-jefferson-on-whether-the-american-constitution-is-binding-on-those-who-were-not-born-at-the-time-it-was-signed-and-agreed-to-1789>

<sup>2</sup> Thomas Jefferson to Samuel Kercheval, July 12, 1816, in *10 Writings of Thomas Jefferson* 43 (P. Ford ed. 1892-99), quoted in A. E. Dick Howard, “Constitutional Revision: Virginia and the Nation,” *University of Richmond Law Review* 9, no. 1 (Fall 1974), 1-74,  
<https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1274&context=lawreview>

While Jefferson had prescribed such regular renewal, proposals to change a constitution can spark strong resistance, and the Commission on Constitutional Revision faced criticisms and rumors. A. E. Dick Howard, the executive director of the commission, has recalled that some opponents sought to discredit the constitutional revision proposal with speculation that it must have originated not from Virginia but from Russia, an accusation shaped by the Cold War context. Confronting such skepticism in preparation for the referenda on the proposed constitution, Howard coordinated meetings with groups in locations across the state.<sup>3</sup> Private funding from the group “Virginians for the Constitution” supported these efforts.<sup>4</sup> During this process, many influential groups endorsed the constitutional revision, but criticism also continued. For example, a letter to the editor of the *Northern Virginia Sun*, written under the pseudonym “Paul Revere,” hypothesized that Thomas Jefferson would have characterized the advocates of the new constitution as threats to democracy.<sup>5</sup>

Although some characterized the proposed constitution as a threat to existing norms, others cited patriotic symbols in their support of the revision. Referring to 1950s segregationist practices that resulted in public school closures, editors of *The Washington Post* praised the constitution revision as approved by the General Assembly in 1969 with the interpretation, “The 1950s have been filed away as an unpleasant memory and Virginia is returning to its true Jeffersonian heritage.”<sup>6</sup>

Such primary source evidence of the constitutional revision reflects not only continuity and change but also varied—and at times, divided—interpretations of this continuity and change by people as they experienced it. By studying the constitution and individuals’ engagement with it, students can gain important perspective on the history of Virginia and the U.S. This subject provides opportunities for students to analyze and synthesize complex primary source evidence.

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<sup>3</sup> “Looking Back, Looking Forward: The Fiftieth Anniversary of the 1971 Rewriting of the Virginia Constitution,” Madison Vision Series Event, April 8, 2021, <https://www.youtube.com/watch?v=jmdC717m6jQ>

<sup>4</sup> A. E. Dick Howard, “The 1971 Virginia Constitution: Promoting the common benefit,” *The Richmond Times-Dispatch*, Dec. 26, 2020, [https://richmond.com/opinion/columnists/a-e-dick-howard-column-the-1971-virginia-constitution-promoting-the-common-benefit/article\\_59b5c2ef-fd2c-519e-999d-7d07369a984e.html](https://richmond.com/opinion/columnists/a-e-dick-howard-column-the-1971-virginia-constitution-promoting-the-common-benefit/article_59b5c2ef-fd2c-519e-999d-7d07369a984e.html).

<sup>5</sup> “Paul Revere” [pseudonym], “Letters to the Editor: Asks What of ‘Other Side,’” *Northern Virginia Sun*, September 16, 1970, <http://www.virginiachronicle.com>.

<sup>6</sup> “Virginia’s Constitution—Not Brilliant, But Good,” *The Washington Post, Times Herald*, Apr. 26, 1969, A10, ProQuest Historical Newspapers: The Washington Post.

## Themes

Studying the current Virginia constitution at its fiftieth anniversary provides opportunities to understand long-term continuities and changes in the history of Virginia and the U.S. Students could also apply their study of the context behind the Constitution of 1971 as part of an analysis of the complexities in current history and politics. Many of the topics addressed in the 1971 constitutional revisions, including civil rights, the role of government in dealing with equality and discrimination, public education, and conservation, feature prominently in current discourse.

For U.S. history surveys, a unit on the 1971 Virginia Constitution can connect with topics covered for other parts of the chronology of U.S. history, including questions of how citizenship and rights are defined. Analyzing the debates and commentary about the 1971 Virginia Constitution provides an opportunity to assess continuities and changes in ideas about government power.

Studying the changes in the 1971 Constitution will enable students to analyze the long history of disfranchisement and segregation. A 1901–1902 convention, without public vote, designed the 1902 Constitution with the purpose of preventing Black voters from using the right to vote that amendments to the Federal Constitution had established in the 1860s. The 1902 Constitution required racial segregation in schools.

Within upper-level courses focused on topics including African American history, the history of women and gender, and the history of Virginia, studying the Constitution of 1971 provides opportunities to analyze connections between politics, government, economics, education, culture, and everyday life. Analyzing the process through which the public voted on the 1971 Constitution, students can assess twentieth-century changes in the role of media in politics.

## Curriculum Organization

The assignment prompts offered in this guide are designed to work separately, combined, or adapted for the framework of your course. An initial series of prompts focuses on historical context, the next series of prompts assesses continuity and change over time, and a series of questions asks students to consider the roles of multiple perspectives and vantage points in the development of the constitution. The “case study” guides provide background information, questions, primary source selections, and resources for further research. By developing a case study, students could apply analysis about context, continuity and change, and vantage points in focused exploration of a variety of topics.

### Topics relevant to the Virginia Constitution of 1971 include:

#### Historical ideas

Questions of how citizenship and rights are defined

Race, gender, family and other socially constructed ideas are codified by both letter and spirit of the law

Macro vs micro—world history to national history to regional history to state history to local history

### Contextualized themes

Cold War

Modern Civil Rights Movement

Black Power Movement

Feminism

Stonewall and the emergence of “Radical” Gay Liberation

Conservative activism

War on Poverty

War on Drugs

Prison Industrial Complex

Anti-war movement

White student movement

UN Declaration of Human Rights and Virginia’s new Bill of Rights

Mass media and politics

### **Introductory Resources**

Explore the constitutions of Virginia across history in the Library of Virginia’s Virginia Constitutions Digital History here:

[https://lva.primo.exlibrisgroup.com/discovery/collectionDiscovery?vid=01LVA\\_INST:01LVA&collectionId=81109358290005756](https://lva.primo.exlibrisgroup.com/discovery/collectionDiscovery?vid=01LVA_INST:01LVA&collectionId=81109358290005756)

Explore the Constitution of Virginia as implemented in 1971 and subsequently amended here:

<https://law.lis.virginia.gov/constitution/>

A brief history of Virginia State Constitutions, 1776–1971, presented by the Library of Virginia:

<https://www.lva.virginia.gov/71constitution/resources/Virginia-Constitutional-History.pdf>

## Context

### Assignments

These prompts encourage students to assess the historical context for development of the Constitution of 1971 by considering why it occurred, why it happened at that moment instead of earlier, how the people involved brought it to fruition, and more:

1) What was the context for the 1971 Virginia constitution? Locally, statewide, regionally, nationally, and internationally, what was happening in the late 1960s and early 1970s? How did these micro and macro contexts influence the creation of and response to the 1971 constitution? How did these contexts shape the content of the Virginia constitution?

You could start by reading through the constitution: based on details in the text, what topics that you have covered in your study of U.S. history are relevant? For example, how do details in the text of the constitution relate to the Cold War, Civil Rights and Black Power Movements, feminist activism, Supreme Court decisions including *Brown v. Board of Education of Topeka* and *Loving v. Virginia*? Are there details in the constitution text that you can relate to the history of your city, county, or institution?

(The assignment to read the constitution text closely could also occur before reaching the post-WWII era in course chronology, giving students an opportunity to interpret the course information about the 1960s and 1970s through the lens of the details they had noted in the constitution.)

2) How did the drafters' body politics and ideologies impact what was ultimately placed within the constitution? Members of the Commission on Constitutional Revision were Albert V. Bryan, Jr., George M. Cochran, Ted Dalton, Colgate W. Darden, Hardy C. Dillard, Alexander M. Harman, Jr., Albert S. Harrison, Oliver W. Hill, A. E. Dick Howard, J. Sloan Kuykendall, Davis Y. Paschall, and Lewis F. Powell, Jr.<sup>7</sup> Figures to research include Oliver Hill, an influential Black attorney and civil rights activist,<sup>8</sup> and Lewis F. Powell, who became a Supreme Court Justice in 1972.<sup>9</sup> Relevant sources include *Encyclopedia Virginia* (<https://encyclopediavirginia.org/>) and primary source newspaper

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<sup>7</sup> "Commemorating the 50<sup>th</sup> Anniversary of the Virginia Constitution," <https://www.lva.virginia.gov/71constitution/>

<sup>8</sup> Larissa Smith Ferguson, "Hill, Oliver W. (1907–2007)," in *Encyclopedia Virginia*, <https://encyclopediavirginia.org/entries/hill-oliver-w-1907-2007/>.

<sup>9</sup> Brian P. Smentkowski, "Lewis F. Powell, Jr.," in *Encyclopedia Britannica*, <https://www.britannica.com/biography/Lewis-F-Powell-Jr.>

articles. Commentary by A. E. Dick Howard, executive director of the commission, includes scholarly publications, news articles, and public addresses available online.<sup>10</sup>

3) Based on the historical context of the 1960s and 1970s, why do you think ratification of the Constitution of 1971 was successful?

The following prompts invite students to interpret the historical context shaping 2021:

4) You have been drafted by the Governor to lead a committee to create a new constitution in 2021–2022. What is the current context for creating this new constitution, and how will the context shape the development process and the content of the constitution? How will appointments to the committee be decided? (For example, how will politics, ideology, education, etc., shape the committee member selection?) How would you structure subcommittees and their duties? What will the goals of the new constitution be? As the leader of the committee, outline a Bill of Rights for the citizens of the Commonwealth.

Topics to consider as part of the 2021 context could include the COVID-19 pandemic (international), the #MeToo Movement and #Black Lives Matter movement (national), high school curricula including African American history (national and state), policies prohibiting teaching of “Critical Race Theory” in some states (national), and restoration of voting rights to certain formerly incarcerated people (state). The list is not exhaustive: what topics do you think would need to be considered to develop a new constitution for Virginia in 2021? How do the topics you identify reflect the needs of Virginia in 2021? How do the topics you identify strive to create a framework for Virginia government in the future? How do you predict that future generations would judge your constitution and its responsiveness to the 2021 context you are living in and experiencing?

5) Once you have created the new constitution, it is now time to sell it to the Commonwealth. Dick Howard toured the state promoting the 1971 constitution and getting

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<sup>10</sup> A. E. Dick Howard, “The 1971 Virginia Constitution: Promoting the common benefit,” *The Richmond Times-Dispatch*, Dec. 26, 2020, [https://richmond.com/opinion/columnists/a-e-dick-howard-column-the-1971-virginia-constitution-promoting-the-common-benefit/article\\_59b5c2ef-fd2c-519e-999d-7d07369a984e.html](https://richmond.com/opinion/columnists/a-e-dick-howard-column-the-1971-virginia-constitution-promoting-the-common-benefit/article_59b5c2ef-fd2c-519e-999d-7d07369a984e.html); A. E. Dick Howard, “Constitutional Revision: Virginia and the Nation,” *University of Richmond Law Review* 9, no. 1 (Fall 1974), 1-74, <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1274&context=lawreview>; A. E. Dick Howard, *Commentaries on the Constitution of Virginia*, 2 vols. (Charlottesville: University Press of Virginia, 1974); Looking Back, Looking Forward: The Fiftieth Anniversary of the 1971 Rewriting of the Virginia Constitution,” Madison Vision Series Event, April 8, 2021, <https://www.youtube.com/watch?v=jmdC717m6jQ>; “Looking Back, Looking Forward: The 50<sup>th</sup> Anniversary of the 1971 Virginia Constitution,” Library of Virginia Event, July 1, 2021, [https://www.youtube.com/watch?v=Kc0wM83s\\_SU](https://www.youtube.com/watch?v=Kc0wM83s_SU).

feedback from citizens about their concerns. But Howard did not have access to social media. How will you and your committee create a campaign using the fourth estate (newspapers and television—old media) alongside new media such as social media and podcasting to get feedback, address concerns, and to sell the new constitution? What role if any do new and old media have in the process of creating the new constitution, or is their job only to report it? (This can be a standalone assignment on the role of media and public participation in politics).

## Change over Time

### Assignments

1) Historians analyze primary sources as evidence reflecting the time periods in which they were created and used. The current Virginia Constitution provides primary source evidence reflecting the era of its development, ratification, and implementation. As amended, this constitution continues to shape everyday life in 2021.

During the time of its ratification, how did the 1971 Virginia Constitution reflect continuity and how did it reflect change? Comparing the 1971 constitution with the constitution it replaced, identify three key differences. To consider how these differences relate to social continuity and change, examine other primary sources reflecting context of Virginia in the 1960s –1970s. Resources can include newspaper accounts and oral histories. What do primary sources that refer directly to the constitution’s development and ratification, such as newspaper accounts of meetings for discussion of the constitution in preparation for the vote on ratification, suggest about people’s views on how the constitution reflected continuity and change? How did people’s opinions about this vary? Using primary sources that do not refer directly to the constitution’s development, such as newspaper articles about topics covered in the constitution including education and conservation, what can we learn about continuities and changes?

2) Examine the Virginia Constitution and select one detail that affects life in 2021. Using primary sources, research the context on that topic for the 1968–1971 time period during which the Constitution was developed, ratified, and implemented. How did this 1968–1971 context shape the text of the Constitution? How are the implications of this detail different in 1971 compared with 2021?

3) Since 1865, there have been three constitutions (1869, 1902, and 1971). Place in context why these constitutions were drafted and what made each different from the constitution it replaced. How are statutes being added or taken away and why? Which constitution held more rights for oppressed groups such as women, African Americans, and poor whites?

As these constitutions were implemented, how did people at the time interpret the connections between the new constitution and previous versions? For example, were there people who characterized the new constitution as radical, progressive, or conservative? How were these terms (radical, progressive, and conservative) being defined, and from whose standpoint were these judgments made? With the progression of time, such as in the decades following 1971, did judgments about the constitution as radical, progressive, or conservative shift?

(Students could think about context such as the Black Codes that were issued during Reconstruction to oppress African Americans. An example of national context to inform the development of the 1971 constitution is the Black Panther Party going into California’s State Assembly fully armed.)<sup>11</sup>

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<sup>11</sup> David Caracio, “From the pages of The Bee, 1967: Armed Black Panthers invade Capitol,” *The Sacramento Bee*. <https://www.sacbee.com/news/local/history/article148667224.html>.

4) When Virginia voters considered constitutional revision in the November 1970 election, they voted on four separate items. The first ballot question asked voters to ratify or reject the Constitution as “agreed to by the General Assembly at its 1969 and 1970 sessions,” with the exception of three separate topics covered in their own individual ballot questions. These separate ballot questions dealt with lotteries and with the General Assembly’s powers to authorize general obligation bonds and back revenue bonds. At earlier stages in the work of the Commission on Constitutional Revision and in the General Assembly debates on the Constitution, there had been plans to isolate other, additional issues as separate referenda. Decisions on topics to isolate in separate referenda were shaped by strategy to prevent more controversial issues from increasing “no” votes.<sup>12</sup> Studying these shifts on how the Constitution would be presented for public vote, what shaped the General Assembly’s decisions on structuring the referenda? What do these decisions suggest about continuity and change?

Detailed ballot information and voting results for each of the ballot questions are available through the Virginia Department of Elections:

[https://historical.elections.virginia.gov/ballot\\_questions/search/year\\_from:1970/year\\_to:1970/type](https://historical.elections.virginia.gov/ballot_questions/search/year_from:1970/year_to:1970/type)

**Sources relevant to these prompts include:**

Howard, A. E. Dick. “Constitutional Revision: Virginia and the Nation.” *University of Richmond Law Review* 9, no. 1 (Fall 1974): 1–74,  
<https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1274&context=lawreview>.

*Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution: Extra Session 1969, Regular Session 1970.*  
<http://www.worldcat.org/oclc/238910>.

*Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970.*  
<http://www.worldcat.org/oclc/637465>.

Schneider, Gregory S. “He helped rewrite Virginia’s constitution to guarantee Black voting rights—‘a blessing’ 50 years ago.” *The Washington Post*, July 1, 2021.  
[https://www.washingtonpost.com/history/2021/07/01/virginia-constitution-black-voting-rights/?fbclid=IwAR3s7S8WCYq3SraijyHpvvuzOR9YLu6e9W\\_wBvkkTJ0AbF0gaRi02IE8pg](https://www.washingtonpost.com/history/2021/07/01/virginia-constitution-black-voting-rights/?fbclid=IwAR3s7S8WCYq3SraijyHpvvuzOR9YLu6e9W_wBvkkTJ0AbF0gaRi02IE8pg).

Newspaper articles and editorials, including publications available through the Virginia Chronicle Digital Newspaper Archive (<https://virginiachronicle.com/>).

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<sup>12</sup> A. E. Dick Howard, “Now Virginia’s Up to Date: A Voice for Consumers,” *The Washington Post, Times Herald*, June 27, 1971, B2, ProQuest Historical Newspapers: The Washington Post.

**Timeline of relevant dates to shape database searches:**

January 1968: creation of the Commission on Constitutional Revision with action from Virginia Governor Mills E. Godwin, Jr., and the General Assembly

June 1968: public hearings held by the Commission on Constitutional Revision

January 1969: Report of the Commission on Constitutional Revision issued

February 1969–February 1970: debates on the amendment of the constitution in the House of Delegates and the Senate

November 3, 1970: vote on four ballot questions, ratifying the new constitution

July 1, 1971: the Constitution of 1971 went into effect

## Vantage Point

### Assignments

1) What do the opinions offered through letters and participation in public comment meetings about the Constitution of 1971 reveal about everyday life and activism? Select a topic that is described in multiple public comments (such as voting age or schools). Using primary sources including the final text of the 1971 Constitution and news articles showing how the constitution was applied, how did the 1971 Constitution incorporate the perspectives of these individuals?

What topics are part of the constitution but not emphasized in the public comments? What does this absence of these topics from the public commentary suggest?

In newspaper editorials and letters to the editor, are different topics emphasized? What topics are part of the constitution but not emphasized in newspaper commentary? What does the absence of these topics suggest?

Records of public comment to the Committee on Constitutional Revision are published in *The Constitution of Virginia: Report of the Commission on Constitutional Revision to His Excellency, Mills E. Godwin, Jr., Governor of Virginia, The General Assembly of Virginia and the People of Virginia* (Charlottesville: The Michie Company, 1969), Appendix A, pp. 485-508, Appendix B, pp. 509-523, <http://www.worldcat.org/oclc/924345320>. In addition, many journalists and members of the public also wrote articles and letters to the editor offering opinions about the constitution revision. Many newspaper essays can be found in the Virginia Chronicle Digital Newspaper Archive (freely available at <https://virginiachronicle.com>) and in research databases available by subscription, including ProQuest Historical Newspapers.

2) Can you add to the historical record by interviewing people about their recollections of the constitutional revision and the 1970 campaign? In an interview, you could collect evidence about your subject's viewpoint on the constitution and about the revision process.

3) In the era of World War II, ideologies of race, eugenics, and Social Darwinism came to a crescendo, creating a world war on the ideologies of white supremacy and imperialism. Changes in the post-war world included the creation of the United Nations, Declaration of Human Rights, and decolonization of Africa. Returning African American veterans alongside African Americans who remained at home started a protest movement with varying ideologies of direct nonviolence and self-defense strategies to challenge racist segregation in the U.S. The invention of the television and television news along with the Cold War brought African American protests, especially in the South, to the nation and around the globe. By the 1950s and 1960s, African Americans had won in key judicial and legislative battles forcing the nation to deal with questions including what are the rights of citizens and are African Americans citizens.

Virginia has been ground zero for the construction of race socially, legislatively, and judicially since the arrival of the first Africans to British North America in 1619. After World War II, Virginia was central to the attack on Jim Crow. Two landmark Supreme Court cases come out of Virginia that dethrone entrenched segregation, second-class

citizenship, and oppression. Known as the Brown decision, the *Brown v. Board of Education of Topeka, KS* were five separate cases that were rolled into one, and one of those five originated from Virginia—*Davis v. County School Board of Prince Edward County*.<sup>13</sup> The Commonwealth’s educational system was under attack and the way of life for many Southerners of European descent was challenged. The *Brown* decision was one of the judicial forces that put pressure on Virginia to amend its constitution in 1971.

While the Constitution of 1971 brought significant change, there were also continuities. According to research by historian Brent Tarter, the 1971 constitution allowed for public monies to be given to segregated private schools. After debate, the General Assembly decided to maintain this part of the current constitution, which had been established through a 1956 amendment. (This became Article VIII, Section 10, in the constitutional revision presented to voters in 1970.)

There were a series of community conversations and feedback sessions about the 1971 constitution led by Dick Howard. Dick Howard recalls that some opponents argued that the constitution revision would require busing (meaning transporting African Americans into the schools that had been predominantly of European descent). The Virginians for the Constitution campaign refuted that interpretation, but Howard identifies this speculation as a factor in the votes against the constitution referendum, particularly in the Southside region of Virginia where newspaper editors promoted this message about busing and where some counties voted against the referendum.<sup>14</sup> In 1971, busing was the subject of Virginia court cases.<sup>15</sup>

Use primary sources reflecting the ratification of Virginia’s Constitution of 1971 to analyze Virginia’s reaction to desegregation, the roadblocks for desegregation, and African American thoughts and responses to education and roadblocks. What do these primary sources reveal about views of education as a civil and human right? Relevant topics for historical context include the funding of private schools, the Bill of Rights in Virginia’s 1971 constitution, and the UN’s Universal Declaration of Human Rights. Students should find and use primary source documents such as newspapers, the NAACP’s records, the Virginia constitution, and the UN’s Universal Declaration of Human Rights (ratified in 1948) in formulating ample support for their arguments.

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<sup>13</sup> Relevant newspaper reports from the *New Journal and Guide* (an African American newspaper in Norfolk, Virginia, found via ProQuest Historical Newspapers) include: “School Segregation Suit Headed For Supreme Court,” June 2, 1951; “Will Amend Constitution To Avoid Integration,” Nov 23, 1955; and March 14, 1959 “VA High Court Firm: ‘Must Keep Schools’—Appeal Is Thrown Out By Jurists,” March 14, 1959.

<sup>14</sup> A. E. Dick Howard, comments to the 12<sup>th</sup> Annual Brown Teacher Institute, the Library of Virginia, August 2, 2021. County vote results are available at [https://historical.elections.virginia.gov/ballot\\_questions/view/3526/](https://historical.elections.virginia.gov/ballot_questions/view/3526/)

<sup>15</sup> “Norfolk Ordered to Expand Busing,” *The New York Times*, Sept. 3, 1971, 9, <https://www.nytimes.com/1971/09/03/archives/norfolk-ordered-to-expand-busing-school-opening-off-pending-supreme.html>.

Although many details of voter discussion during the constitution referendum campaign have been lost to time, as historians we can find voices in other sources such as newspapers. Using the *New Journal and Guide* as well as the NAACP papers, we begin to recover the voices of African Americans and their concerns surrounding the constitution. In 1969, the Hampton NAACP was against two changes to the constitution that included a provision for a literacy test for voter registration (Article II, Section 2) and a provision that allowed for the removal of names from the voter rolls (Article II, Section 4).<sup>16</sup> By October 1970, two local African American organizations, The Virginia Crusade for Voters (based in Richmond) and the Independent Citizens of Tidewater, fully endorsed all the referenda on changes to the constitution unanimously.<sup>17</sup> After the Constitution of 1971 went into effect, the fears of the Hampton NAACP came to fruition in 1976 when thousands of voters were dropped from the voters' roll during a presidential election year because they had not voted in four years.<sup>18</sup>

African Americans are largely thought of by many as a monolithic group, but they are a diverse group. Why were African Americans split on the constitution and what it meant for the African American community? How would organizations like the Black Panthers and the rise of Black Power influence the support of the constitution or fight against it? Although the new constitution was inspired by/forced because of the Modern Civil Rights Movement, African Americans had already begun to see erosions of civil rights including voting by 1976.<sup>19</sup> Did these erosions influence African Americans' politics, activism, and support for the constitution?

Article II, Section 4, of the Virginia Constitution was amended in the 1990s, but voter eligibility and purges remain a prominent issue in current national politics and discourse in the twenty-first century. How do voting eligibility requirements impact some communities more than other communities and why during federal elections? (Recent news reports in 2021 about voter registration cancellations in Georgia can provide an example.)

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<sup>16</sup> "Hampton NAACP: 2 Proposed Changes In Constitution Opposed," *New Journal and Guide*, Mar. 1, 1969, A3, ProQuest Historical Newspapers: Norfolk Journal and Guide.

The text ultimately adopted by the General Assembly on literacy requirements for voting removed reference to "a fair, reasonable, and nondiscriminatory test to be prescribed by the General Assembly" and retained the language "Nothing in this Article shall preclude the General Assembly from requiring as a prerequisite to registration to vote the ability of the applicant to read..." *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 822. <http://www.worldcat.org/oclc/637465>.

<sup>17</sup> "Rawlings Endorsed By Va. Crusade For Voters," *New Journal and Guide*, Oct. 3, 1970, A1, ProQuest Historical Newspapers: Norfolk Journal and Guide and "Rawlings, Fitzpatrick, Ragsdale Get Support," *New Journal and Guide*, Oct. 17, 1970, B2, ProQuest Historical Newspapers: Norfolk Journal and Guide.

<sup>18</sup> "Can You Vote?," *New Journal and Guide*, Mar. 13, 1976, 8, ProQuest Historical Newspapers: Norfolk Journal and Guide.

<sup>19</sup> The Virginia Constitution's provision for cancelling voters' registration after four years of inactivity was removed by later amendment, effective in 1995. The Constitution of Virginia, <https://law.lis.virginia.gov/constitution/article2/section4/>.

4) The main reason Virginia changed its constitution was in response to federal legislation and the Supreme Court of the United States because of direct action and protest by African Americans. Two stalwarts of the African American community protest activities were Black newspapers and the NAACP. Beginning in 1968 and going through 1972, each student will examine either a two-year period of the NAACP Papers (available in ProQuest History Vault and at the Library of Congress) or the *Norfolk Journal and Guide* or both institutions' records for issues, concerns, social justice, civil rights, and human rights for the same year and write an essay using those primary sources explaining what the issues were and if the 1971 constitution addressed those issues and why. Archival papers of other groups and other digitized collections of Black newspapers can also be used.

### **Resources relevant to these prompts include:**

#### **Newspapers**

##### *New Journal and Guide*

This is an African American newspaper out of Norfolk, Virginia, and was founded in 1900. This source is rich with the voices of African Americans over the discussion of the 1971 constitution. It is a great resource to cover the twentieth-century constitutional changes from an African American perspective. One of the earliest documents identified was from 1922 where a Massachusetts congressman stated Virginia's constitution was a disenfranchising instrument because of race. Articles from the 1950s cover segregation in education. Beginning in the 1960s, African Americans discussed the constitution, including rationale for supporting the 1970 referenda as well as opposition to some amendments.

If you have access to the *New Journal and Guide* through ProQuest Historical Newspapers, there are more articles and opinions about the day's happenings that students may use in one of the assignments and/or in the creation of new ones.

#### **Organizational Records**

##### NAACP Papers

The NAACP papers held in the Library of Congress Manuscripts Division are digitized in another ProQuest database entitled History Vault. The NAACP papers include what the local NAACP chapters were up to during the years the 1971 constitution was being constructed, discussed, and sold to the Commonwealth. Some of the highlights include a fight for prisoners' rights that can be used as a way to assess the implications of the Constitution of 1971 and its Bill of Rights. This example provides another vantage point for African Americans and what their civil and human rights concerns were at the time. The Papers also include many of the lawsuits the NAACP were involved in, the state conventions (Oliver Hill, the African American on the Committee on Constitutional Revision, attended Virginia's 35<sup>th</sup> state convention to explain and sell the proposed constitution), the national conventions, youth group activities, and more.

## **Case Study Strategies**

Faculty and students can develop a variety of case studies on the Virginia Constitution by using primary and secondary sources to analyze specific topics. For example, primary sources available digitally and at many libraries would enable study of the implications of the Bill of Rights in the Constitution of 1971 for a variety of groups and political issues. Combining sources about the constitution with historical context about Virginia and the U.S. in the 1960s and 1970s, students could complete their own research to consider how the constitution reflected and shaped citizenship and voting rights, marriage and family, LGBTQ rights, education, the status of prisoners, etc. This guide offers some sources and approaches that could be tailored to case studies relevant to your course topics.

Research strategies can include searches in newspaper databases and in published records of the Commission on Constitutional Revision. We would also be interested in learning from students who can conduct oral histories or research in local repositories that would reflect individuals' viewpoints on the Virginia Constitution and the topics it covers.

### **Research approach: studying public comment received by the Commission on Constitutional Revision**

When the Commission on Constitutional Revision was formed, the Commission sent letters and news releases to newspaper, radio, and television media requesting input from Virginia citizens on the state constitution. The approximately 200 responses received were compiled, and summaries are available as part of the Commission's report.<sup>20</sup>

The Commission on Constitutional Revision then announced and hosted public hearings, adding the messages of the approximately 150 participants to the Commission's record of public views. These hearings were held at the Student Center at Old Dominion College in Norfolk (June 17, 1968), at the Federal Courthouse in Roanoke (June 21, 1968), at the Federal Courthouse in Abingdon (June 22, 1968), at the Auditorium of the Ninth Street Office Building in Richmond (July 17, 1968), and at the Council Chamber of City Hall in Alexandria (July 18, 1968).<sup>21</sup>

The report of these public comments, available at many libraries across Virginia (<http://www.worldcat.org/oclc/924345320>), provides an opportunity to analyze individuals' and groups' engagement with the constitution and the revision process. How do the viewpoints expressed in these comments reflect continuity and/or change occurring in Virginia and nationally in the 1960s? Did these public views shape the content and implementation of the final 1971 Constitution? Reviewing the public views compiled through this process, what groups are represented? Are there topics or viewpoints that recur

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<sup>20</sup> *The Constitution of Virginia: Report of the Commission on Constitutional Revision to His Excellency, Mills E. Godwin, Jr., Governor of Virginia, The General Assembly of Virginia and the People of Virginia* (Charlottesville: The Michie Company, 1969), Appendix A, pp. 485-508, <http://www.worldcat.org/oclc/924345320>.

<sup>21</sup> *The Constitution of Virginia: Report of the Commission on Constitutional Revision to His Excellency, Mills E. Godwin, Jr., Governor of Virginia, The General Assembly of Virginia and the People of Virginia* (Charlottesville: The Michie Company, 1969), Appendix B, pp. 509-523, <http://www.worldcat.org/oclc/924345320>.

or are strongly emphasized in the public comments? If so, what does that pattern reveal? Are there groups or viewpoints that are not present? If so, what does that absence reveal? What primary sources could be analyzed to understand those perspectives?

To analyze changes in the constitutional revision as the Committee on Constitutional Revision's proposal was amended and adopted in the General Assembly, you can use the parallel tables in *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 815-880. <http://www.worldcat.org/oclc/637465>; or *Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution: Extra Session 1969, Regular Session 1970*, 679-782. <http://www.worldcat.org/oclc/238910>.

### **Primary Source Document Example:**

One of the comments compiled through the public hearing hosted by the Commission on Constitutional Revision in Norfolk on June 17, 1968, provides an opportunity to analyze the history of sexuality. The Commission's report notes the message of Denis Nicholas of the Tidewater Homophile League:

“Mr. Nicholas (the name is a pseudonym) called for constitutional protection for homosexuals. No section of the present Constitution does this, although section 1 refers to the right to the pursuit of happiness. The League proposes an amendment to the Constitution declaring that the rights of the citizens of Virginia should not be abridged on account of race, color, religion, creed, sex, or ‘sexual orientation’—the latter phrase protecting homosexual conduct....The League plans to submit a legal brief to the Commission.”<sup>22</sup>

What do the details of this record reveal about the history of sexuality and gay rights activism in 1968? For example, why does this message appear under a pseudonym, and what does the commission report's note about this reveal about the history of the time?

What does the form in which the 1971 Constitution was adopted reveal about the history of sexuality and gay rights activism?

In 2006, Virginia voters ratified an amendment that became Section 15-A within the Virginia constitution bill of rights and that remains in place in the constitution in 2021. This amendment states:

“That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions. This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other

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<sup>22</sup> *The Constitution of Virginia: Report of the Commission on Constitutional Revision to His Excellency, Mills E. Godwin, Jr., Governor of Virginia, The General Assembly of Virginia and the People of Virginia* (Charlottesville: The Michie Company, 1969), Appendix B, p. 510, <http://www.worldcat.org/oclc/924345320>.

legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.”

Using primary sources including local and national newspapers or records of the General Assembly, what historical context occurring in 2006 shaped this amendment?

Citing the *Loving v. Virginia* (1967) case, a federal judge in the U.S. Court for the Eastern District of Virginia ruled in *Bostic v. Rainey* (2014) that this amendment violated human rights. The court of appeals decision in *Bostic v. Shaefer* (2014) affirmed the *Bostic v. Rainey* decision. Although these rulings invalidated Section 15-A, it remains in place in the constitution. The 2015 Supreme Court decision of *Obergefell v. Hodges* ([https://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)) marked a national transition, establishing that the Fourteenth Amendment of the U.S. Constitution requires states to license and to recognize same sex marriages.<sup>23</sup>

### **Sources for research on the history of sexuality include**

#### Primary sources:

Digitized copies of *The Gay Blade*, a Washington, D.C., publication beginning in 1969:  
<https://digdc.dclibrary.org/islandora/object/dcplislandora%3A2841>

#### Secondary sources:

Bonds, Peter. “Stonewall on the Potomac: Gay Political Activism in Washington, DC, 1961-1973.” M.A. Thesis, James Madison University, 2016,  
<https://commons.lib.jmu.edu/master201019/455>.

Stein, Marc. *Rethinking the Gay and Lesbian Movement*. New York and London: Routledge, 2012.

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<sup>23</sup> Brent Tarter’s manuscript on the constitutional history of Virginia analyzes this history.

## **Case Study: Gender**

The 1960s and 1970s reflect continuities and changes in the history of women, gender, and sexuality. How did this historical context shape the Virginia constitution? What does the history of the Virginia constitution reveal about the history of gender in Virginia and in the United States?

### **Historical Context for the Virginia Constitution’s Prohibition of Discrimination on the Basis of Sex**

In the 1960s, feminist activism attained new visibility.<sup>24</sup> Scholars have begun to assess this recent history in Virginia.<sup>25</sup> These secondary sources, along with primary sources freely available digitally and through college and university collections, enable new analysis. Using secondary sources about gender in activism and politics as context, this curriculum provides opportunity to analyze primary source details to consider how the 1971 Virginia Constitution shaped and reflected ideas about gender. Within this guide, you will find primary source passages and ideas for locating additional primary sources.

The Bill of Rights in the 1971 Virginia Constitution retained many parts of the existing Bill of Rights drafted by George Mason in 1776.<sup>26</sup> However, there were also some significant adjustments. The 1971 Virginia Constitution added language stating:

“That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.”<sup>27</sup>

How did the development, ratification, and interpretation of this language shape and reflect history?

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<sup>24</sup> Susan J. Douglas, *Where the Girls Are: Growing Up Female with the Mass Media* (New York: Three Rivers Press, 1994); Alice Echols, *Daring to Be Bad: Radical Feminism in America, 1967-1975* (Minneapolis: University of Minnesota Press, 1989).

<sup>25</sup> Sandra Gioia Treadway, “Dorothy McDiarmid and Mary Marshall: Champions of Change in the Virginia General Assembly,” *Virginia Women Their Lives and Times*, vol. 2, Cynthia A. Kierner and Sandra Gioia Treadway, eds. (University of Georgia Press, 2016), 333-353; Megan Taylor Shockley, *Creating a Progressive Commonwealth: Women Activists, Feminism, and the Politics of Social Change in Virginia, 1970s-2000s* (Louisiana State University Press, 2018).

<sup>26</sup> “Virginia Panel Asks Revised Constitution Minus School Segregation Section,” *New York Times*, Jan. 12, 1969, 45, ProQuest Historical Newspapers: The New York Times.

<sup>27</sup> Article I, Section 11, The Constitution of Virginia, <https://law.lis.virginia.gov/constitution.pdf>.

Consider historian Megan Taylor Shockley’s interpretations of the history of activism by women and historian Sandra Gioia Treadway’s analysis of women’s careers in the General Assembly. As Treadway explains, delegate Dorothy McDiarmid successfully advocated for this revision. When first proposed by the Commission on Constitutional Revision, Article I, Section 11, did not address gender inequality directly, originally stating “that the right to be free from any governmental discrimination upon the basis of religious or political conviction, race, color, or national origin shall not be abridged.”<sup>28</sup>

### **Vantage Points on Gender Discrimination and the Law in the 1960s–1970s Virginia Constitution Ratification Process**

Both the Virginia Senate and the House of Delegates approved the addition of discrimination upon the basis of sex as a prohibited discrimination, making this language part of the constitution submitted for the November 1970 public vote.<sup>29</sup> Some legislators opposed this step, however. In the House debates of the revised version of the Bill of Rights presented by the Committee on Privileges and Elections, delegate C. Harrison Mann, Jr., asserted that the proposed statement on freedom from governmental discrimination would be a mistake, predicting:

“the day is going to come when the number of lawsuits that arise out of this amendment is going to require the tripling and quadrupling of the employees in the office of the Attorney General. All one has to do is take a look at the thousands of pending suits in the federal courts, the thousands of pending complaints in the Equal Opportunity Commission, to get some idea of what can happen.”<sup>30</sup>

Mann’s remarks reflect the context of historical continuity and change in legal approaches to discrimination. Title VII of the federal Civil Rights Act of 1964 had prohibited discrimination by employers on the basis of “race, color, religion, sex, or national origin” and had established the Equal Employment Opportunity Commission to handle reports of discrimination.<sup>31</sup> However, many employers had continued to classify some positions as jobs for men and other positions as jobs for women. Until the 1970s, many newspaper job

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<sup>28</sup> Commission on Constitutional Revision, *The Constitution of Virginia: Report to His Excellency, Mills E. Godwin, Jr., Governor of Virginia, the General Assembly of Virginia, and the People of Virginia*, 1969, 95, <http://www.worldcat.org/oclc/988676174>.

<sup>29</sup> The General Assembly also removed the Committee on Constitutional Revision’s wording on “political conviction.”

<sup>30</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 481. <http://www.worldcat.org/oclc/637465>.

<sup>31</sup> Text of the Civil Rights Act is available at <https://www.ourdocuments.gov/doc.php?flash=false&doc=97&page=transcript>. A source for analysis of Title VII and its applications is Gillian Thomas, *Because of Sex: One Law, Ten Cases, and Fifty Years That Changed American Women’s Lives at Work* (New York: St. Martin’s Press, 2016).

announcements continued to differentiate between “female” and “male” jobs.<sup>32</sup> Mann emphasized these continued practices, predicting that the proposed language prohibiting discrimination on the basis of sex in the Virginia constitution would cause problems:

“If the State has the temerity to advertise for an engineer in the male sections of the newspaper, it is in violation of this section, unless the State also advertises for an engineer under the female section. As you all probably know, there are cases pending in our federal courts right now in which the attempt is being made to deprive the newspapers of the right to run columns ‘Help, Female’ and columns ‘Help, Male’, on the theory that that is a discrimination based on sex. The court in one instance has granted an injunction against a newspaper in this connection. No longer will we be able to advertise for charwomen to clean up our buildings: they must be ‘char-neuter’, I guess.

As I said, this thing has run the gamut of foolishness, all the way from newspaper ads to a suit out in Oklahoma where some woman wants to do away with separate toilets—it has gotten down to this point of foolishness—in government buildings and in private businesses.

We spent almost a hundred years in this State putting legislation on the books of Virginia for the purpose of protecting women. And all of that legislation is going to go right smack-dab in the ashcan. No longer can you limit the hours of work on the theory of protecting the health and welfare of women, if we have this in the Bill of Rights. The thing that worries me about this whole bit is that it does not stop here. It moves from a so-called discrimination—which, incidentally, in some instances may be an actual discrimination—to a requirement of balance. We have a pending suit in the federal court in connection with a bank. In this instance it is brought by the men, because all the bookkeepers in that bank are women, and the men say they are being discriminated against. You get this identical type of charge. Unfortunately, this is not far-fetched. The courts say they are right. That is the amazing aspect.”<sup>33</sup>

Mann then commented that the proposal under consideration was not necessary, remarking that “this Commonwealth has existed all these years without this provision in our Bill of Rights. I do not think we need it...Every one of us agrees in his heart with what this language says. Every one of us agrees with it as a practical political matter as we deal with legislation. I say, however, that it is totally unnecessary in the Virginia Bill of Rights.”<sup>34</sup>

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<sup>32</sup> Nicholas Pedriana and Amanda Abraham, “Now You See Them, Now You Don’t: The Legal Field and Newspaper Desegregation of Sex-Segregated Help Wanted Ads 1965–75,” *Law and Social Inquiry* 31, no. 4 (November 2006): 905-938, <https://doi.org/10.1111/j.1747-4469.2006.00039.x>.

<sup>33</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 481. <http://www.worldcat.org/oclc/637465>.

<sup>34</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 482. <http://www.worldcat.org/oclc/637465>.

Dorothy McDiarmid then responded, reporting responses from citizens across Virginia who

“have been proud of our Constitutional Revision Commission because they put in the Bill of Rights what my colleague has said is in all of our hearts, and is what we intend to do.

As for the one addition made by our committee, I would like to speak to that. When I first read this, as everybody in the State did, I was glad that the Commission had said that we shall be free from any governmental discrimination upon the basis of religious or political conviction, race, color or national origin. I was glad to see that, and I believe it is the principle our State intends to operate on. But I began to get letters from a lot of people who said, ‘Well, it is interesting. All of these categories who are going to be free from governmental discrimination are fine. But half of the people in all of those categories may be discriminated against because they are women.’

There have been discriminations against women in the past. And on this basis I did approach the committees, both in the Senate and in the House, and they both included the word ‘sex’.

I hope very much that this part of this section will be agreed to...”<sup>35</sup>

In the House of Delegates, the Committee on Privileges and Elections presented wording about discrimination on the basis of sex as part of a substitute for the Bill of Rights previously proposed by the Constitutional Revision Commission. Simultaneously, the Committee on Privileges and Elections presented a series of wording adjustments described as efforts to promote clarity and to conform the language in the Virginia constitution with equivalent language in the federal constitution: these changes dealt with the topics of the right to a speedy and public trial, militia, and education.<sup>36</sup> On April 2, 1969, the House of Delegates voted to approve this set of adjustments with 89 votes in favor and 10 opposed, thus introducing discrimination on the basis of sex as a topic within the Constitution.<sup>37</sup> In the April 3, 1969, Virginia Senate debates on these revisions, Hampton senator Hunter Andrews credited the “charming lady members of the General Assembly” for noticing the original text’s omission; Andrews explained that the Committee on Constitutional Revision characterized the omission as unintentional and reported the Senate Committee on Privileges

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<sup>35</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 482. <http://www.worldcat.org/oclc/637465>.

<sup>36</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 472-473. <http://www.worldcat.org/oclc/637465>.

<sup>37</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 494. <http://www.worldcat.org/oclc/637465>.

and Election's recommendation to add the word "sex." The Senate voted in favor of this recommendation, with 37 Yeas and 0 Neas recorded.<sup>38</sup>

However, on April 15, 1969, the House Committee on Privileges and Election asked the House of Delegates to reconsider, now proposing to strike from Section 11 the language "and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex or national origin shall not be abridged."<sup>39</sup> Delegate Lyman C. Harrell, Jr., speaking for the Committee on Privileges and Elections, reported that

"This section has been the subject of careful reconsideration since the House acted on it earlier in this session. The Senate made a change in it which, after the word 'religious,' removed 'or political'; the word 'sex' was included and that brought about considerable problems. When you are talking about the matter of race, creed, color or 'sex' in governmental areas, what happens to those who are in the correctional institutions? Shall they be required to be put together or would they have a right to demand that? Similar problems certainly could occur. It was felt that the better part of wisdom was to leave this language out. It is not necessary to the Constitution of Virginia. It is covered fully by the case law and it is covered fully otherwise."<sup>40</sup>

Dorothy McDiarmid spoke again to argue the importance of prohibiting discrimination in the state constitution, and these comments suggest controversy within the legislature:

"Mr. Speaker and members of the House, I have been very conscious over the past days that there has been a lot of talk about this part of the Bill of Rights. I have been apprised of some of the difficulties and I am willing to agree that there may in the future possibly be some questions.

I talked with the head of one of the departments about which we were considerably worried. He does not seem to be as worried as we are. During these last few days I have been of the impression that we were adopting the position, 'When in doubt take it out.' I think that brings into question our credibility.

It has been said before that the House passed this language. The Senate passed it with one deletion. We made one addition which the Senate retained. The revisors were men with very, very good minds who were seeking a Constitution for the future. Look back to the gentlemen who worked so hard on the first Constitution.

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<sup>38</sup> Treadway, "Dorothy McDiarmid and Mary Marshall," 342, 352n19; *Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution: Extra Session 1969, Regular Session 1970*, 380. <http://www.worldcat.org/oclc/238910>.

<sup>39</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 665. <http://www.worldcat.org/oclc/637465>.

<sup>40</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 667. <http://www.worldcat.org/oclc/637465>.

They had problems worse than this and they did not run away from them. They stood and they faced them and they brought forth a Constitution which was radical for their times.

In the commentary on this particular section the revisors say that the Commission believes the Virginia Bill of Rights should be a living and operating instrument of government and should, by stating the basic safeguards of the people's liberties, minimize the occasion for Virginians to resort to the federal Constitution and the federal courts. They added language in Section 2 prohibiting discrimination on the basis of religious or political conviction, race, color or national origin. We were told that they left 'sex' out by oversight. Both houses have passed this with 'sex' in it.

You wonder why? Why is it a good thing to have this language included? It is a matter of dignity, of constitutional dignity, that women and black people are seeking. We have to admit that in the past there have been all kinds of discrimination against both of these classes of people. While this is not so now and the federal Constitution does take care of one matter, it does not take care of the other. We should pass this whole section because it does say what I believe includes what we believe in our hearts to be what we want this State to do. We do not want State discrimination against any of the people here mentioned. I believe that we should refuse to pass this amendment."<sup>41</sup>

Directly following these comments, the delegates voted to retain the language on discrimination, but the results were close: forty-eight delegates rejected the proposed amendment to delete "and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex or national origin shall not be abridged." Forty-five delegates voted in favor of this deletion.<sup>42</sup> Considering these primary source records from the General Assembly, along with your research in the historical context of the time, what factors do you think shaped the delegates' viewpoints and decisions?

Analyzing primary source details from these House debates, what strategies did legislators use for assessing the proposed Bill of Rights and for supporting their interpretations? What do these strategies reveal about the legislators' approaches to social change? Are there other primary sources available that provide further evidence about the legislators' viewpoints and strategies or about their constituents' viewpoints on this topic? While Delegate McDiarmid had reported hearing from the public about the absence of "sex" as a category of discriminated prohibited in the original Constitution Revision, this topic was not emphasized in the public comments received and reported by the Commission on

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<sup>41</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 671. <http://www.worldcat.org/oclc/637465>.

<sup>42</sup> *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 671. <http://www.worldcat.org/oclc/637465>.

Constitutional Revision. What historical factors could explain this? How could more primary source information about the public's viewpoints be located?

How does Dorothy McDiarmid's perspective on the 1971 Virginia Constitution fit in the context of McDiarmid's overall career? As Treadway explains, McDiarmid's earlier political career was shaped by McDiarmid's opposition to the segregationist strategies that sought to close schools rather than implement desegregation. When first elected in 1960, McDiarmid became the third woman out of 140 members of the General Assembly.<sup>43</sup> Useful primary sources on this topic include newspapers as well as General Assembly proceedings.

### **Virginia and National Patterns of Continuity and Change**

Through Article I, Section 11 of the 1971 Virginia Constitution, Virginia enacted a state-level provision on gender equality. In the aftermath of this step, activism in favor of and against the federal Equal Rights Amendment shaped American politics.

On March 22, 1972, the U.S. Congress passed the Equal Rights Amendment. A focus of many feminist activists and groups since its initial introduction to Congress in 1923, the ERA would amend the federal constitution to establish that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." As thirty-five states ratified the federal Equal Rights Amendment in the 1970s, grassroots activists in opposition to the Equal Rights Amendment also became prominent, publicizing their arguments that the ERA would disrupt cultural norms and harm women. These discourses played prominent roles in culture, everyday life, and political parties of the late twentieth century. Many ERA opponents argued that the amendment would remove societal protections that women wanted and needed, publicizing their interpretations that the ERA would limit women's access to alimony, require women to register for the military draft, and result in public gender-neutral bathrooms. Although both the Republican and the Democratic parties had previously endorsed the Equal Rights Amendment, anti-ERA activism was influential. The ERA failed to obtain support from the necessary thirty-eight states before a deadline Congress had established.<sup>44</sup>

The Virginia General Assembly considered the Equal Rights Amendment in 1973. As historian Megan Taylor Shockley explains, influential national anti-ERA activist Phyllis Schlafly traveled to Virginia to testify in the General Assembly. Richmond resident Adèle Clark, an artist and former suffragist, also testified against the ERA, arguing that "It reflects the thinking of fifty years ago. They [pro-ERA activists] are fighting a battle that has already been won." Delegate Dorothy McDiarmid sponsored the ERA, and Virginia activists

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<sup>43</sup> Treadway, "Dorothy McDiarmid and Mary Marshall," 338.

<sup>44</sup> Michael Stewart Foley, *Front Porch Politics: The Forgotten Heyday of American Activism in the 1970s and 1980s* (New York: Hill and Wang, 2013); Robert Self, *All in the Family: The Realignment of American Democracy Since the 1960s* (New York: Hill and Wang, 2012); Marjorie J. Spruill, *Divided We Stand: The Battle Over Women's Rights and Family Values That Polarized American Politics* (New York: Bloomsbury USA, 2017).

affiliated with groups including the National Organization for Women, the American Association of University Women, the League of Women Voters, and the Federation of Business and Professional Women's Clubs supported the ERA.<sup>45</sup>

The Virginia Senate and House Privileges and Elections Committees resisted the ERA by not presenting it for a vote. Before preventing a resolution on the Equal Rights Amendment from moving forward in 1974, the House of Delegates Privileges and Election Committee considered a confidential memo from the Virginia attorney general's office that argued the federal ERA would bring new requirements for public facilities including bathrooms. Dorothy McDiarmid criticized the committee for using this document from the attorney general in closed session and refuted the interpretation that the language of the ERA would necessitate combined bathroom facilities for men and women.<sup>46</sup>

Virginia's status in the 1970s was rare. Only two other states, Illinois and Louisiana, added state equal rights provisions during the 1970s while rejecting the federal equal rights amendment. By the end of the 1970s, state constitutions or state constitutional amendments of eighteen states required equal legal treatment regardless of sex. Like Virginia, all except two of these states had introduced this constitutional wording in the 1970s. However, compared with other states' language, the text in the Virginia Constitution is also unique in its assertion that "the mere separation of the sexes shall not be considered discrimination." For a comparison of states' equal rights amendments, see Leslie W. Gladstone's Congressional Research Service Report, "Equal Rights Amendments: State Provisions."<sup>47</sup>

Considering primary sources and secondary sources, what are the local, state, and national factors in politics, culture, and everyday life that shaped this component of the Virginia constitution? Considering the historical context of the 1960s and 1970s, why did the Virginia Constitution assert that governmental discrimination on the basis of sex would not occur? Why did the Virginia Constitution specify that "the mere separation of the sexes shall not be considered discrimination"?<sup>48</sup> In the period since its enactment, how has this statement shaped events and experiences in Virginia? Considering continuity and change over time, has this framework been challenged?

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<sup>45</sup> Shockley, *Creating a Progressive Commonwealth*, 52–53; Adèle Clark, *Encyclopedia Virginia*, <https://encyclopediavirginia.org/entries/clark-adele-1882-1983/>.

<sup>46</sup> Helen Dewar, "Confidential Memo Held To Blame," *Washington Post*, Feb. 28, 1974, B1, ProQuest Historical Newspapers: The Washington Post.

<sup>47</sup> Leslie W. Gladstone, "Equal Rights Amendments: State Provisions," Congressional Research Service Report RS20217, August 23, 2004, [https://www.everycrsreport.com/files/20040823\\_RS20217\\_ca058473694533d5becfe0493fcf17b79fe637bf.pdf](https://www.everycrsreport.com/files/20040823_RS20217_ca058473694533d5becfe0493fcf17b79fe637bf.pdf)

<sup>48</sup> Information about the addition of wording on "the mere separation of the sexes" through Senate Joint Resolution No. 23, introduced by the Select Committee, is found in *Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution: Extra Session 1969, Regular Session 1970*, 561–562, 576–602. <http://www.worldcat.org/oclc/238910>. House of Delegates approval is documented in *Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution, Extra Session 1969, Regular Session 1970*, 734–769. <http://www.worldcat.org/oclc/637465>.

## The Virginia Constitution as Historical Context for 2021

After considering the historical context of the 1960s and 1970s, reflect on the connections between the past and the present.

How do the roles of women in Virginia government during the development and ratification of the 1971 Virginia Constitution compare with the roles of women in Virginia government in 2021? What primary sources can be used to understand continuity and change across these two eras? What sources would you recommend to historians of the future as primary sources that help illuminate the ideals of gender in the history of 2021?

How does the history of your institution relate to the topic of gender equality and government? If changes occurred in your institution's history in the 1960s and 1970s (for example, the exclusion of women as full-time residential students at the University of Virginia until 1970), how did these changes shape and reflect the history of the Virginia constitution?

### Primary Source Investigation: Strategies and Tools for Further Research

Considering the historical context of the 1971 Virginia Constitution, why did the General Assembly and voters support the wording of Article I, Section 11 of the Virginia Constitution while the federal Equal Rights Amendment remained unsuccessful in Virginia? Virginia did not ratify the federal Equal Rights Amendment until 2020, becoming the thirty-eighth state to do so as recent activists have sought to revive the Equal Rights Amendment.<sup>49</sup>

The digitized Virginia newspapers in the Virginia Chronicle digital newspaper archive (<https://virginiachronicle.com/>) provide a great opportunity to research the history of these discourses in Virginia by searching for commentary in news articles, editorials, and letters to the editor.

These primary sources provide evidence of activism in Virginia that can be compared with secondary sources. For example, information about Virginia activist groups is available in: "Northern Va. Women Unite Behind Rights Amendment," *Northern Virginia Sun*, January 4, 1973, p. 6, <https://virginiachronicle.com/?a=d&d=NVS19730104.1.6&srpos=1&e=-----en-20--1--txt-txIN-Northern+Va.+Women+Unite+Behind+Rights+Amendment----->

Newspapers also provide evidence of the rhetoric about gender equality in Virginia. For example, as Virginia legislators explained their approach to the Equal Rights Amendment, they cited the Virginia constitution. The *Northern Virginia Sun* quoted Arlington delegate

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<sup>49</sup> Tom Spiggle, "Did Virginia Just Make The Equal Rights Amendment Part of The Constitution?" *forbes.com*, February 7, 2020, <https://www.forbes.com/sites/tomspiggle/2020/02/07/did-virginia-just-make-the-equal-rights-amendment-part-of-the-constitution/?sh=46e9fc29393c>

John L. Melnick as saying, “Virginia has had its own equal rights amendment for two years. I feel that the federal government is just catching up with the state.” (“Northern Va. Delegates Favor Rights Amendment,” *Northern Virginia Sun*, January 11, 1973, p. 1, <https://virginiachronicle.com/?a=d&d=NVS19730111.1.1&srpos=26&e=-----en-20--21-byDA-txt-txIN-%22equal+rights+amendment%22+%22general+assembly%22----->)

Simultaneously, activists who supported the Equal Rights Amendment emphasized that the proposed amendment was perceived as a positive disruption. Mary Gereau, legislative consultant from the National Education Association and a speaker at a meeting of the Arlington Business and Professional Women’s Club characterized the passage of the ERA in federal Congress as “evidence that the women of America, when they really want something, can put their talents together and get it” while predicting that the members of the Business and Professional Women’s Club would face challenges in efforts to support the era within Virginia. As reported in the *Northern Virginia Sun*, Gereau remarked, “‘It will be your job,’ she continued, ‘to convince members of the General Assembly that the Equal Rights Amendment will not emasculate the men of Virginia or break up homes, but will admit that the majority—who ARE women—are people who should have equal rights’” (Mrs. Gereau Advises BPW on Virginia ERA, *Northern Virginia Sun*, October 23, 1972, p. 5, <https://virginiachronicle.com/?a=d&d=NVS19721023&e=-----en-20--1-byDA-txt-txIN-%22equal+rights+amendment%22+%22general+assembly%22----->).

Newspaper searches also yield evidence of how the state equal rights provision was applied. For example, the office of the state attorney general successfully challenged a scholarship program administered by the state and established by a personal bequest in 1920 limiting the funding recipients “to young men of the white race, born in Virginia who are unable to raise the cost of college education” (“Scholarship Fund Ruled Against Law,” *Northern Virginia Sun*, Aug. 9, 1972, p. 3, <https://virginiachronicle.com/?a=d&d=NVS19720809&e=-----en-20--81-byDA-txt-txIN-%22virginia+constitution%22+%22sex%22----->).

Examples of Virginia newspaper opinion pieces about the implications of the ERA include:

- Letter to the editor by Martha Lippman, “E.R.A: An Emotional Issue,” *Northern Virginia Sun*, January 12, 1973, p. 4  
<https://virginiachronicle.com/?a=d&d=NVS19730112.1.4&srpos=28&e=-----en-20--21-byDA-txt-txIN-%22equal+rights+amendment%22+%22general+assembly%22----->
- Clive L. DuVal, “The Other View,” *Northern Virginia Sun*, December 22, 1972, p. 4, <https://virginiachronicle.com/?a=d&d=NVS19721222&e=-----en-20--1-byDA-txt-txIN-%22equal+rights+amendment%22+%22general+assembly%22----->
- “The League Answers: Progressive Thinking,” *Northern Virginia Sun*, March 21, 1974, p. 4,  
<https://virginiachronicle.com/?a=d&d=NVS19740321.1.4&srpos=15&e=-----en-20--1--txt-txIN-%22equal+rights+amendment%22+%22general+assembly%22----->

- “Official Virginia Farm Bureau Policy for 1974,” *Virginia Farm Bureau News*, December 1, 1973, p. 13, <https://virginiachronicle.com/?a=d&d=VFBN19731201.1.13&srpos=14&e=-----en-20--1--txt-txIN-%22equal+rights+amendment%22+%22general+assembly%22--->

Other periodical research sources available at many institutions, including ProQuest Historical Newspapers: Black Newspapers, would also be useful for searches.

The Virginia Feminist Oral History Project, with transcripts and recordings available online through Virginia Commonwealth University, <https://archives.library.vcu.edu/repositories/5/resources/554>, provides another type of primary source evidence.

Many special collections libraries and archives will also contain unique personal papers, such as the papers documenting the career of Dorothy McDiarmid, available at George Mason University: [https://scrc.gmu.edu/finding\\_aids/mcdiarmid.html](https://scrc.gmu.edu/finding_aids/mcdiarmid.html)

Students might also consider compiling new oral histories reflecting experiences and viewpoints of members of the public.

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